FILED
SEP 22 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 386

IN THE MATTER

of

HULON CAPSHAW, an Attorney,
Petitioner.

PETITIONER'S REPLY BRIEF

THOMAS I. SHERIDAN,
11 E. 44th Street,
New York, N. Y.,

DEAN ALFANGE,
9 E. 40th Street,
New York, N. Y.,

Attorneys for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 386

IN THE MATTER

of

HULON CAPSHAW, An Attorney,
Petitioner.

PETITIONER'S REPLY BRIEF

To earn one's daily bread in the only occupation or profession he knows cannot be denied him in a judicial determination without that due process of law and equal protection of the laws guaranteed to every person (attorneys not excepted) by the Fourteenth Amendment of the Federal Constitution.

The answer and answering brief fail to show that these denials of petitioner's Constitutional rights have not been meted out to your petitioner. The failure to come to grips directly with these fundamental questions cannot be obviated by arguing that they were not raised (Respdt's brief, pp. 1, 4), since petitioner has submitted to this Court his brief (pp. 14-16, 73-79) and reply brief (pp. 2-4) before the Court of Appeals showing where and how they were raised at his first opportunity. The respondent, in fact, stated in its answering brief (pp. 3-4) before the Court of Appeals that:

> "III. Appellant's (petitioner's) Point 6 is that the disbarment decision denied to appellant (peti-

tioner) due process of law and was in violation of the provisions of the State and Federal Constitutions.

"We will discuss these points under three headings in the order named."

These Federal Constitutional questions were not only duly and squarely raised in the Court of Appeals, but under its well-established practice in disciplinary cases the Court of Appeals first had to determine whether any "substantial legal rights of the accused had been ignored or violated" before that Court could have even reached the question as to the evidence. *Matter of Goodman,* 199 N. Y. 143, 144; *Matter of Long,* 287 N. Y. 449, 454-456; *Matter of Eldridge,* 82 N. Y. 161, 166-167; *Matter of Robinson,* 209 N. Y. 354, 359.

The norm of presenting this case from its inception, and which has been accepted and acted upon by the Appellate Division as shown by the statements in its decisions, and now still is insisted upon (Respdt's brief, p. 23), is the assumed truth of the perjured testimony of Davis and Weinberg. Neither Davis nor Weinberg gave testimony in either case against petitioner and neither was subject at any time to cross-examination by him. The petitioner has not had an opportunity to meet in any fair trial the inferences from their testimony forming the actual basis for the Appellate Division's decisions. The false testimony of Davis and Weinberg, nevertheless, forms the expressly stated basis for the long and tortuous discussion of petitioner's testimony (Respdt's brief, pp. 23-54) in which excerpts taken from the contexts, partially quoted or placed in unfair juxtaposition, are distorted and used for unjustifiable inferences.

The respondent now for the first time says "there is no contention that the res adjudicata doctrine was applied in this case" (Respdt's brief, p. 7), and undertakes to explain away (Id., p. 5) Justice Untermyer's opinion (concurring in result) which seems clearly to say that he regarded the

majority removal opinion as res adjudicata in this case. His opinion is:

> "Concurring in result. A majority of this court having previously concurred in the opinion of Presiding Justice Martin in Matter of Capshaw (258 App. Div. 470), I am constrained on the authority of that decision to vote for the disbarment of the respondent." (R. 689).

Justice Untermyer's vote for disbarment was necessary to a majority, since only two Justices of the five concurred in the "per curiam opinion" (R. 688-9). (This is here pointed out since respondent's brief continuously refers to the "per curiam opinion" as "the majority opinion," (pp. 3, 4, 5, 6), and once as "the Appellate Division's opinion." (Id. p. 6)). The intended implication, therefore, in the statement, "the case was, as petitioner contends it should be, 'begun ab initio,'" (Id., p. 7) and in the statement, "the majority opinion did not * * * hold that it was bound by it (the majority removal opinion)" (Id., p. 4), is unwarranted.

The cases cited in respondent's brief are not applicable to this case.

Clearly, due process of law and the equal protection of the laws applicable to disbarment proceedings in New York have been denied to your petitioner in violation of the 14th amendment. A review of this case should be granted.

Dated, New York, September 19, 1944.

Respectfully submitted,

THOMAS I. SHERIDAN,
DEAN ALFANGE,
Attorneys for Petitioner.